

Economic Impact Statement

LSA Document #18-69

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

IC 4-22-2.1-5(a) provides that an agency that intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses must prepare a statement that describes the annual economic impact of the rule on small businesses after the rule is fully implemented as described in IC 4-22-2.1-5(b). That statement must be submitted to the Small Business Ombudsman at the Indiana Economic Development Corporation. The Small Business Ombudsman is required to review the rule and submit written comments to the agency not later than seven days before the public hearing.

The proposed rule amends 760 IAC 1-21 to better meet the statutory requirement that surcharge paid by health care providers to participate in the Patient's Compensation Fund (PCF) equal the actuarial risk to the PCF. The rule is intended to address the statutory requirement set forth in IC 34-18-5-2 that the amount of the surcharge must be adequate for the payment of claims and expenses from the PCF and may not exceed the actuarial risk posed to the PCF. The proposed rule reduces surcharge 8.2% for nursing homes. The proposed rule also includes the appropriate surcharge rate for anesthesiologist assistants who wish to participate in the PCF. Finally, the proposed rule allows a health care provider to use a policy of insurance issued by a captive insurer, as defined in IC 27-1-2-2.3, as proof of financial responsibility required for participation in the PCF. These amendments will only affect those health care providers choosing to participate in the PCF, as participation is voluntary and not mandatory.

Estimated Number of Small Businesses Affected:

The proposed rule will impact nursing homes and anesthesiologist assistants who choose to participate in the PCF. The proposed rule will also impact insurance companies; risk retention groups; and surplus lines producers who remit surcharge on behalf of authorized surplus lines carriers; required to remit surcharge to the PCF on behalf of health care providers. As of July 18, 2017, there were 386 nursing homes participating in the PCF. There were 15 anesthesiologist assistants, none of whom participated in the PCF as of August 9, 2017. As of July 18, 2017, there were 95 insurance companies and 24 risk retention groups which remitted surcharge to the PCF. There are approximately 139 resident surplus lines producers, and approximately 3,000 non-resident surplus lines producers. There are 46 entities registered as captive insurers under IC 27-1-2-2.3. It is unknown how many of these health care providers or other entities meet the definition of "small business" under IC 5-28-2-6.

Estimated Administrative Costs Imposed on Small Businesses:

Insurers, risk retention groups, and surplus lines producers remitting surcharge on behalf of health care providers electing to participate in the PCF will incur certain administrative costs. Insurers, risk retention groups, and surplus lines producers are required to collect surcharge on the same basis as premiums and remit the surcharge to the PCF. Insurers, risk retention groups, and surplus lines producers will need to update systems to reflect the reduced surcharge rates. Captive insurers registered under IC 27-1-2-2.3 will also need to develop systems to remit surcharge to the PCF. The costs to update and create systems are expected to be minimal.

Estimated Total Annual Economic Impact on Small Businesses:

The estimated total annual economic impact on small businesses is difficult to quantify. Nursing homes will see reduced surcharge rates. There are no anesthesiologist assistants currently participating in the PCF. To participate in the PCF, anesthesiologist assistants will be required to remit \$1,344.00 (which is 45% of the most recently published surcharge for a specialty class one physician), along with proof of financial responsibility set forth in 760 IAC 1-21-2.5.

Justification of Requirements or Costs:

These requirements and costs are necessary. The proposed rule is intended to address the statutory requirement set forth in IC 34-18-5-2 that the amount of the surcharge must be adequate for the payment of claims and expenses from the PCF and may not exceed the actuarial risk posed to the PCF. Milliman, Inc., the PCF's actuarial firm, issued a report to the PCF with respect to changes to nursing home surcharge rates. Based on this report, the Indiana Department of Insurance (IDOI) determined that amendments to 760 IAC 1-21 are necessary.

Regulatory Flexibility Analysis:

There are no less intrusive or less costly alternative methods for achieving the purposes of the proposed rule. Surcharge adjustments and costs associated with system changes should be design standards, which are expressed requirements in terms of specific means that must be satisfied without choice or discretion. Because

Milliman, Inc. has determined the surcharge rates based solely on the risk a health care provider brings to the PCF, the IDOI has determined that uniform application of the proposed rule is the most beneficial for the PCF and health care providers.

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